

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 3:05-cv-270-RS-MD

TOY R. ARNETT JR., RENA M. ARNETT, THE
NESIUS FAMILY LIMITED PARTNERSHIP,
RICK D. NESIUS, SHANNON K. NESIUS, and
FAITH ASSEMBLY CHRISTIAN CHURCH OF
MIRAMAR BEACH, INC.,

Defendants.

CONSENT DECREE

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA") and the United States Army Corps of Engineers (the "Corps"), filed the Complaint herein against Defendants Toy R. Arnett Jr., Rena M. Arnett, the Nesius Family Limited Partnership, Rick D. Nesius, Shannon K. Nesius, and Faith Assembly Christian Church of Miramar Beach, Inc. (collectively, "Defendants"), alleging that Defendants violated Sections 301(a) and 309 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a), 1319;

WHEREAS, the Complaint alleges that Defendants Toy R. Arnett Jr., Rena M. Arnett, the Nesius Family Limited Partnership, Shannon K. Nesius and Rick D. Nesius (collectively, the "Site A Defendants") violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United

States at or near 613 County Road 393, approximately a half-mile south of U.S. Highway 98, in Santa Rosa Beach, Florida ("Site A"), and more fully described in the Complaint, without authorization by the Corps, and that Defendants Toy R. Arnett Jr. and Rena M. Arnett violated CWA Section 309 by failing to comply with an EPA administrative compliance order issued in 2003 directing Defendants Toy R. Arnett Jr. and Rena M. Arnett to cease further discharges of dredged and/or fill material and to restore Site A to its former elevation and vegetated conditions;

WHEREAS, the Complaint alleges that Defendants Toy R. Arnett Jr., Rena M. Arnett, Shannon K. Nesius, Rick D. Nesius, and Faith Assembly Christian Church of Miramar Beach, Inc. (collectively, the "Site B Defendants") violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at or near 3223 U.S. Highway 98, approximately 400 feet west of the intersection of U.S. Highway 98 and County Road 393, in Santa Rosa Beach, Florida ("Site B"), and more fully described in the Complaint, without authorization by the Corps;

WHEREAS, the Complaint seeks: (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of EPA and/or the Corps, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. §§ 1319(d) and 1344(s)(4);

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the Complaint regarding Site A and Site B (collectively, the "Sites");

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Defendants in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 309(b) and 404(s) of the CWA, 33 U.S.C. §§ 1319(b), 1344(s).

2. Venue is proper in the Northern District of Florida pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because Defendants conduct business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon the United States and upon Defendants, their officers, directors, agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with any of the Defendants whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns, or any person, firm or corporation acting in concert or participation with the Defendant, to take any actions necessary to comply with the provisions hereof, subject to the force majeure provisions of Section VIII.

5. The transfer of ownership or other interest in Site A or Site B shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in Site A or Site B, the party making such transfer shall provide written notice and a true copy of this Consent Decree to the transferee and shall simultaneously notify EPA, the Corps, and the United States Department of Justice at the addresses specified in Section X below, that such notice has been given. As a condition to any such transfer, the Defendant making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree and shall require the transferee to include compliance with the terms of this Consent Decree as a condition in any subsequent deed or other legal instrument by which the transferee divests itself of any interest in Site A or Site B.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendants under CWA Sections 301 and 309 concerning the Sites.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of achieving and maintaining full compliance with, and to further the purposes of, the CWA.

8. The Site A Defendants' obligations under this Consent Decree are joint and several with respect to Site A. The Site B Defendants' obligations under this Consent Decree are joint and several with respect to Site B.

9. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

10. The parties acknowledge that Nationwide Permit 32, found at 67 Fed. Reg. 2020, 2084 (Jan. 15, 2002), authorizes any fill that was placed on the Sites as of the date of the filing of this lawsuit to remain in place, subject to the conditions provided in the Nationwide Permit and this Consent Decree. The parties further acknowledge that Nationwide Permit 32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree, subject to the terms and conditions of the Nationwide Permit and this Consent Decree.

11. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c), or any other authority.

12. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

13. This Consent Decree in no way affects the rights of the United States as against any person not a party or successor to this Consent Decree.

14. The United States and Defendants reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

15. Nothing in this Consent Decree shall constitute an admission of fact or law, or of liability or violation of law, by any party, except that Defendants agree they will not contest jurisdiction in an action to enforce this decree.

IV. SPECIFIC PROVISIONS

CIVIL PENALTIES

16. Within thirty (30) days of entry of this Consent Decree, the Site A Defendants shall pay a civil penalty to the United States in the amount of Sixty-Five Thousand Dollars (\$65,000). Within thirty (30) days of entry of this Consent Decree, the Site B Defendants shall pay a civil penalty to the United States in the amount of Twenty-Five Thousand Dollars (\$25,000).

17. Defendants shall make the above-referenced payments by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2006Z00329/001, EPA Region IV and the DOJ case number 90-5-1-1-17459. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Florida. Payments received by the Department of Justice after 4:00 P.M. Eastern Time will be credited on the next business day.

18. Upon payment of the civil penalty required by this Consent Decree, Defendants shall provide written notice, at the addresses specified in Section X of this Consent Decree, that such payment was made in accordance with Paragraph 17.

19. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section IX) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21, and are not tax deductible expenditures for purposes of federal law.

RESTORATION AND MITIGATION

20. The Site A Defendants shall comply with the terms and conditions of the Restoration Plan attached as Appendix 1 hereto and incorporated herein by reference.

21. To ensure that all parcels of land identified in Exhibit A to Appendix 1 remain undisturbed, Defendants shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Recorder of Deeds Office in Walton County, Florida. Thereafter, each deed, title, or other instrument conveying an interest in any property identified in Exhibits A or B of Appendix 1 shall contain a notice stating that the property is

subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

22. Within sixty (60) days following completion of the terms and conditions of the Restoration Plan attached as Appendix 1, the Site A Defendants shall cause to be recorded in the public records of Walton County, Florida, a deed of conservation easement, in the form attached as Appendix 2 hereto and incorporated herein by reference, over Lot 56 of Site A that complies with the provisions of Section 704.06, Florida Statutes. The grantee of the conservation easement shall be the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. The boundary of the conservation easement between Lots 55 and 56 of Site A shall be marked by permanent signs placed at reasonable intervals.

23. A. On or before July 14, 2008, the Site B Defendants, for purposes of off-site mitigation for the alleged violations at Site B, shall:

1. Convey to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (or any other agency, entity or organization selected by the United States) fee title, free of all liens and encumbrances, to a 20-acre parcel of property previously purchased by Defendant Faith Assembly Christian Church of Miramar Beach, Inc., and more particularly described in Appendix 3 hereto; or
2. In the event that Defendant Faith Assembly Christian Church of Miramar Beach, Inc. is unable to secure clear title to such property by July 14, 2008, pay on that date Four Hundred Thousand Dollars

(\$400,000) to any agency, entity or organization selected by the United States for purposes of mitigation.

- B. All payments or conveyances made under this paragraph are made as part of the injunctive relief under Section 309(b) of the CWA, for the compensatory purpose of off-site mitigation, and are not being made in lieu of a civil penalty or in settlement of Defendants' actual or potential liability for any civil or criminal penalty under the CWA or otherwise, pursuant to a Supplemental Environmental Project, or as a penal sanction.

V. NOTICES AND OTHER SUBMISSIONS

24. Within ten (10) days of the date of any conveyance or payment made under Paragraph 23, the Site B Defendants shall notify EPA, the Corps, and the United States Department of Justice in writing, at the addresses specified in Section X below, that such conveyance or payment was made in accordance with Paragraph 23.

25. Within ten (10) days after the deadline for completing the Restoration Plan attached hereto as Appendix 1 of this Consent Decree, the Site A Defendants shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, that the Restoration Plan has been completed. If the Restoration Plan has not been timely completed, the notice shall specify the date when it will be completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

26. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, Defendants shall, by signature of an authorized representative, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

27. Until two (2) years after termination of this Consent Decree, Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the activities alleged in the Complaint or to compliance with this Consent Decree, regardless of any corporate retention policy to the contrary. Until two (2) years after termination of this Consent Decree, Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the activities alleged in the Complaint or to compliance with this Consent Decree. During this period, Defendants shall maintain on file with the Court and with Plaintiff the location of the depository site(s) of such records, and the name, address and telephone number of the custodian of the records for each such site.

28. At the conclusion of the document retention period, Defendants shall notify EPA, the Corps, and the United States Department of Justice, at the addresses specified in Section X below, at least ninety (90) days prior to the destruction of any such records or documents, and,

upon request by the United States, Defendants shall deliver any such records or documents to EPA. Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

29. A. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter Site A, Site B, or any record depository site identified pursuant to Paragraph 27 to:
1. Monitor the activities required by this Consent Decree;
 2. Verify any data or information submitted to the United States;
 3. Obtain samples;
 4. Inspect and evaluate Defendants' restoration and/or mitigation activities; and
 5. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

- B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from Defendants as authorized by law.

VII. DISPUTE RESOLUTION

30. Any dispute that arises with respect to the meaning or requirements of this Consent Decree, including the attached appendices, shall be, in the first instance, the subject of informal negotiations between the United States and Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and the Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, including the attached appendices, and the CWA, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree, including the attached appendices, and the CWA.

31. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, included the attached appendices, and the CWA, and that Defendants' position will achieve compliance with the terms and conditions of this Consent Decree, including the attached appendices, and the CWA.

32. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Paragraph 40 below regarding payment of stipulated penalties.

VIII. FORCE MAJEURE

33. Defendants shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence, and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate

events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of the Sites, or failure to obtain federal, state or local permits.

34. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, Defendants shall notify EPA, the Corps, and the United States Department of Justice in writing, at the addresses specified in Section X below, within seven (7) calendar days after the event. Such notice shall include a discussion of the following:

- A. What action has been affected;
- B. The specific cause(s) of the delay;
- C. The length or estimated duration of the delay; and
- D. Any measures taken or planned by Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

35. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with EPA and the Corps to determine when to begin or resume the operations that had been affected by any Force Majeure event.

36. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VII of this Consent Decree.

37. Defendants shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

38. After entry of this Consent Decree, if Defendants fail to timely fulfill any requirement of the Consent Decree (including the Restoration Plan attached as Appendix 1), Defendants shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- | | | |
|----|--|--------------------|
| A. | For Day 1 up to and including
Day 7 of non-compliance | \$300.00 per day |
| B. | For Day 8 up to and including
15 of non-compliance | \$500.00 per day |
| C. | For Day 16 and beyond of non-compliance | \$1,000.00 per day |

Such payments shall be due within 30 days of demand by the United States.

39. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, shall be resolved by the parties pursuant to the Dispute Resolution provisions in Section VII.

40. The filing of a motion requesting that the Court resolve a dispute shall stay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by Defendants as provided in this section.

41. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 33 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

42. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

43. Defendants shall make any payment of a stipulated penalty by "EFT" or wire transfer to the United States Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2006Z00329/001, EPA Region 4 and the DOJ case number 90-5-1-1-17459. Any payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the U. S. Attorney's Office for the Northern District of Florida. Payments received by the United States Department of Justice after 4:00 P.M. Eastern Time will be credited on the next business day. Further,

upon payment of any stipulated penalties, Defendants shall provide written notice, at the addresses specified in Section X of this Consent Decree.

X. ADDRESSES

44. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

Chief, Office of Water Legal Support
United States Environmental Protection Agency, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, GA 30303
404-562-9529 (tel)
404-562-9486 (fax)

Chief, Wetlands Regulatory Section
U.S. Environmental Protection Agency, Region 4
Water Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303
404-562-9409 (tel)
404-562-9486 (fax)

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE:

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
202-514-2219 (tel)
202-514-8865 (fax)

Office of the U.S. Attorney, NDFL
21 East Garden Street
Pensacola, FL 32502
850-444-4000 (tel)
850-434-9050 (fax)

Office of the U.S. Attorney, NDFL
ATTN: Ivey Sewell, Financial
Litigation Unit
111 North Adams Street, 4th Floor
Tallahassee, FL 32301
850-216-3861 (tel) 850-942-8466 (fax)

C. TO THE CORPS:

Loren M. Mason, PhD.
Acting Chief Regulatory Division, Jacksonville District
U. S. Army Corps of Engineers
701 San Marco Blvd.
Jacksonville, Florida 32207

Dorothy Lowe Boardman
Assistant District Counsel
U.S. Army Corps of Engineers
701 San Marco Blvd.
Jacksonville, FL 32207
904-232-1165 (tel)
904-232-1954 (fax)

D. TO DEFENDANTS:

For Rena M. Arnett, the Nesius Family Limited Partnership, Shannon K. Nesius
and Rick D. Nesius:

Matthew W. Burns, Esquire
Law Office of Matthew W. Burns
P.O. Box 1226
Destin, FL 32540
850-837-8445 (tel)
850-650-0400 (fax)

For Toy R. Arnett, Jr. and Faith Assembly Christian Church of Miramar Beach:

Walter E. Forehand, Esquire
Edwin Steinmeyer, Esquire
Lewis, Longman & Walker, P.A.
125 South Gadsden Street
Tallahassee, FL 32301
850-222-5702 (tel)
850-224-9242 (fax)

XI. COSTS OF SUIT

45. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendants subsequently be determined by the Court to have violated the

terms or conditions of this Consent Decree, Defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendants for noncompliance with or enforcement of this Consent Decree.

XII. PUBLIC COMMENT

46. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendants agree not to withdraw from, oppose entry of, or challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

XIII. CONTINUING JURISDICTION OF THE COURT

47. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIV. MODIFICATION

48. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and Defendants, and approved by the Court.

XV. TERMINATION

49. This Consent Decree may be terminated by either of the following:

A. Defendants and the United States may at any time make a joint motion to the Court for termination of this Consent Decree or any portion of it; or

B. Defendants may make a unilateral motion to the Court to terminate this Consent Decree after all of the following has occurred:

1. Defendants have obtained and maintained compliance with all provisions of this Consent Decree and the CWA for twelve (12) consecutive months;
2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;
3. Defendants have certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all parties; and
4. Within forty-five (45) days of receiving such certification from Defendants, the United States has not contested in writing that such compliance has been achieved. If the United States disputes Defendants' full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 200_.

United States District Judge

ON BEHALF OF THE UNITED STATES:

GREGORY R. MILLER
United States Attorney
Northern District of Florida

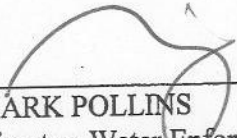
J.D. ROY ATCHISON
Assistant United States Attorney
21 East Garden Street, Suite 400
Pensacola, FL 32502

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division



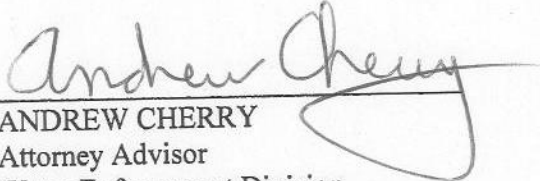
MARTIN F. McDERMOTT
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Dated: November 9, 2006



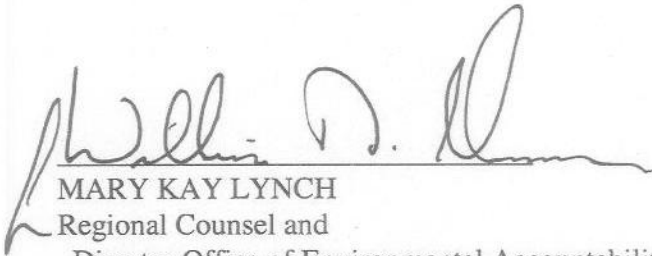
MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency.

Dated: 11/13/06



ANDREW CHERRY
Attorney Advisor
Water Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Dated: 11/9/06



MARY KAY LYNCH

Regional Counsel and

Director Office of Environmental Accountability

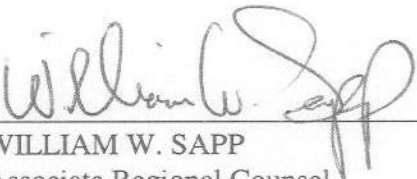
U.S. Environmental Protection Agency

Region 4

61 Forsyth St., S.W.

Atlanta, GA 30303

Dated: 11/9/06



WILLIAM W. SAPP

Associate Regional Counsel

U.S. Environmental Protection Agency

Region 4

61 Forsyth Street, S.W.

Atlanta, GA 30303

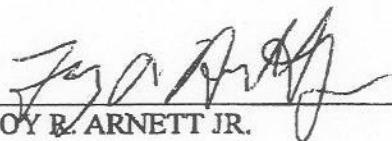
Dated: 11/08/06

Loren M. Mason

LOREN M. MASON, PhD.
Acting Chief Regulatory Division
Jacksonville District
U. S. Army Corps of Engineers

Dated: 9 Nov 2006

ON BEHALF OF DEFENDANTS TOY R. ARNETT JR. and FAITH ASSEMBLY CHRISTIAN
CHURCH OF MIRAMAR BEACH, INC.,

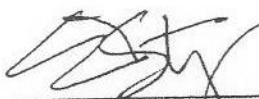


TOY R. ARNETT JR.

Dated: 11-5-06

Fr. Dr. Anthony P. ...
FAITH ASSEMBLY CHRISTIAN CHURCH
OF MIRAMAR BEACH, INC.,

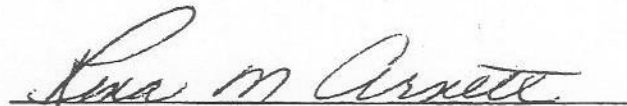
Dated: 11-8-08



WALTER E. FOREHAND, Esquire
EDWIN STEINMEYER, Esquire
Lewis, Longman & Walker, P.A.
125 South Gadsden Street
Tallahassee, FL 32301

Dated: 11/13/06

ON BEHALF OF DEFENDANTS RENA M. ARNETT, THE NESIUS FAMILY LIMITED
PARTNERSHIP, RICK D. NESIUS, and SHANNON K. NESIUS


RENA M. ARNETT

Dated: 11-8-06

The Ness Family Limited Partnership
THE NESS FAMILY LIMITED PARTNERSHIP

Dated:

11-8-06

by Rick Nessius
As General Partner



RICK D. NESIUS

Dated: 11-8-01

Shannon Nesius
SHANNON K. NESIUS

Dated: 11-8-06